COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1)Appeal from Order NO. 320 of 2003

National Insurance Co. Ltd. … **Appellant.**

Versus

Mansha Ram
and others. … **Respondents.**

(2)Appeal from Order NO. 20-D of 2002

National Insurance Co. Ltd. … **Appellant.**

Versus

Anoj Singh
and others. … **Respondents.**

(3)Appeal from Order NO. 21-D of 2002

National Insurance Co. Ltd. … **Appellant.**

Versus

Kunwar Singh
and others. … **Respondents.**

(4)Appeal from Order NO. 22-D of 2002

National Insurance Co. Ltd. … **Appellant.**

Versus

Smt. Ambi Devi
and others. … **Respondents.**

(5)Appeal from Order NO. 23-D of 2002

National Insurance Co. Ltd. … **Appellant.**

Versus

Dev Ram and another … **Respondents.**

(6)Appeal from Order NO. 24-D of 2002

National Insurance Co. Ltd. … **Appellant.**

Versus

Smt. Meena Devi
and others. … **Respondents.**

(7)Appeal from Order NO. 14-D of 2002

Prem Singh … **Appellant.**

Versus

Regional Manager
National Insurance Co. Ltd.
and others. … **Respondents.**

(8)Appeal from Order NO. 19-D of 2002

National Insurance Co. Ltd. … **Appellant.**

Versus

Prem Singh
and others. … **Respondents.**

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Heard. Delay is condoned and all other appeals are admitted.

All these appeals arise out of the same motor accident and similar questions are involved for determination in these appeals, therefore, all these appeals are being decided by this common judgment.

All these appeals have been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act***) against the

judgment and awards passed by Motor Accident Claims Tribunal, Chamoli (***hereinafter referred to as the Tribunal***). A.O. No. 320 of 2003 arises out of M.A.C. Case No. 64 of 2000, Mansha Ram Vs. Regional Manager, National Insurance Co. Ltd. & others, wherein the learned Tribunal vide impugned judgment and order dated 19-4-2002 has awarded compensation of Rs. 2,64,490/- along with interest @ 6% per annum in favour of the claimants against the appellant-Insurance Company. In M.A.C.T. Case nO. 29 of 2000, giving rise to A.O. NO. 20 of 2002, the Tribunal vide judgment and order dated 6-5-2002 has awarded compensation worth Rs. 40,000/- along with interest @ 6% per annum in favour of claimants Anoj Singh and others, In A.O. No. 21/2002, arising out of M.A.C. case No. 6 of 2001 the Tribunal vide judgment and warded dated 6-5-2002. awarded compensation worthier Rs. 20,000/- to the claimants. In A.O. No. 22 of 2002, arising out of M.A.C. Case nO. 84 of 2000, the Tribunal ha awarded compensation of Rs. 2,31,400/- vide impugned order dated 6.5.2002. In A.O. No. 23 of 2002, arising out of Claim Petition No. 82/2002, vide order dated 6-5-2002 the compensation f Rs. 15,000/- has been awarded, while in A.O. No. 24 of 2002, arising out of Claim Petition NO. 81 of 2002, claimant has been warded compensation of Rs. 10,000/- vide judgment and award dated 6-5-2002. A.O. Nos. 14 of 2002 and 19 of 2002 arise out of the same judgment and award dated 19-4-2002 passed in Claim Petition No. 71 of 2000, whereby the learned Tribunal ha awarded compensation worth Rs. 48,400/- to the claimant Prem Singh. Against the impugned judgment and award, both claimant and Insurance Company have come up in appeal.

Brief facts, giving rise to these appeals, are that on 22.9.1999 bus No. U.P. 07C-4629 met with an accident due to rash and negligent driving by its driver between Karnpryag and Gauchar, with the result several persons sustained injuries and some of them succumbed to their injuries in the said accident including deceased Kalyan Singh in respect of whose death Motor Accident Claim Case No. 84 of 2000 was preferred by Ami Devi and others. In rest of the

cases, the injured-claimants have filed claim petitions. All the four opposite parties have contested the claim petitions by filing their statements on different grounds. The appellant-Insurance Company has asserted that the owner/driver of the offending bus were not holding valid papers in respect of the bus in question including a valid driving licence, insurance and that the claimant-injured were not bona fide passengers.

The learned Tribunal has framed necessary Issues in each case. The Tribunal on the point of rash and negligent driving by the driver of the offending bus has come to the conclusion that the motor accident in question has occurred due to rash and negligent driving by the driver of bus No. U.P. 7 C-4629 with the result the claimants and deceased Kalyan Singh sustained simple and grievous injuries. Deceased Kalyan Singh succumbed to his injuries. The learned Tribunal further found that the driver of the offending bus was holding a valid driving licence at the time of accident and the vehicle was duly insured with the National Insurance Company Ltd. Ultimately, after perusing the evidence led by the parties, the learned Tribunal has awarded compensation in each case, as mentioned in the impugned judgment and awards.

WE have heard learned counsel for the appellant-Insurance Cimpany, Mr. D.S. Patni, learned counsel for the claimant-appellant Prem Singh, Mr. R.P. Nautiyal, as well as learned counsel for the claimant-respondents and have gone through the entire material on record including the impugned judgment and awards.

He learned counsel for the appellant-Insurance Company has submitted that in the cases, under appeals, the driver of the bus in question was not holding a valid driving licence. Moreover, there was no endorsement for driving in the hills on the driving licence. It has also been submitted that the driving licence was meant for light motor vehicles and that the accident was caused

due to overloading of the bus. As such, the vehicle was being driven in breach of policy conditions, therefore, the liability to pay compensating cannot be fastened on the Insurance Company. We have gone through the entire record and have considered the submissions made on behalf of the Insurance Company-appellant.

So far as the argument of the learned counsel that the driver of the vehicle was not holding a valid driving licence with hill endorsement is concerned, we find that specific Issue has been framed by the learned Tribunal. From a perusal of the record, we find that the photocopy of the driving licence of the driver of the bus has been filed in each case. From a perusal of the photocopy of this licence, it is clear that there is endorsement for driving in the hill road of Dehradun Region w.e.f. 1.6.2000 till 31.5.2003. The endorsement has been made by the Licensing Authority, M.V.Deptt. Rishikesh. The driving licence was initially issued on 21-4-1997 and was valid upto 20-4-2000. The contention of the learned counsel that because the driving licence was issued for light motor vehicle, therefore, the Unsurance Company is not liable for compensation is not tenable in view of the Hon'ble Apex Court judgment in the case of ***"National Insurance Company limited Vs. Swaran Singh and others" [2004(3) Supreme Court Cases, 297].*** The Hon'ble Supreme Court in clause (vi) of Paragraph no. 110 (**SUMMARY OF FINDINGS**) has observed that ***"Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. …."*** In the cases, under appeal, there is clear-cut finding of the Tribunal that the accident in question was the result of rash and negligent driving on the part of bus driver. On the other hand, the learned Tribunal has found that photo copy of valid driving licence has been filed on record. The appellant-Insurance Company has

failed to indicate any iota of evidence to show that the cause of accident was overloading of the bus. It is not disputed that the driver of the bus was authorised to driver transport vehicle fro 21-4-1997 to 20-4-2000. Moreover, from the copy of the inspection report of the District Magistrate and Superintendent of Police Chamoli, dated 22-9-1999 (Annexure CA-2) it is apparent that the vehicle in question was a ***mini private bus,*** bearing No. UP 074629, which met with an accident. Therefore, in any view of the matter, it cannot be said that the bus driver was not holding a valid driving licence on the date of accident. Having considered the entire evidence on record, we do not find any illegality or infirmity in the findings of the learned Tribunal. Therefore, none of the contentions raised on behalf of the Insurance Company is tenable.

Now, coming to the appeal A.O. No. 14 of 2002, preferred by claimant Prem Singh, wherein prayer to enhance the amount of compensation, we have perused the entire evidence produced by the claimant before the Tribunal. We find that no documentary evidence showing the permanent disability on the person of the claimant has been moved under the provisions of Order 41, Rule 27 C.P.C. to adduce additional evidence in appeal. In the absence of any evidence showing permanent disability to the claimant-appellant, we find that the Tribunal was justified in awarding total compensation of Rs. 48,400/- along with interest @ 6% per annum in favour of the claimant-appellant. In our view, the Tribunal has awarded reasonable amounts under different heads. Having considered the case from all the four corners, the amount of Rs. 48,400/- appears to be just compensation awarded to injured Prem Singh. The appeal A.O. No. 14 of 2002, preferred by Prem Singh is devoid of any merit and must fail.

No other point was urged or argued before us.

In the result, all the appeals are liable to be dismissed.

All the appeals are dismissed. The judgment and awards, appealed against, are upheld. No order as to cots.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

01-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP